

Appeal from decision of Oregon State Office, Bureau of Land Management, declaring lode mining claims null and void ab initio. OR MC-20089 and OR MC-20090.

Affirmed.

1. Indian Lands: Generally -- Mining Claims: Lands Subject to Lands within the Colville Indian Reservation were segregated from mineral entry on Sept. 19, 1934, and the land was not thereafter opened to mineral location. A mining claim located on such land after Sept. 19, 1934, is null and void ab initio.

APPEARANCES: Dora Trudell, pro se.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Dora Trudell has appealed from a decision of the Oregon State Office, Bureau of Land Management (BLM), dated June 9, 1983, declaring the Tungston Nos. 1 and 2 lode mining claims, OR MC-20089 and OR MC-20090, null and void ab initio.

Appellant's mining claims were located October 31, 1973, and filed for recordation with BLM on September 17, 1979, pursuant to section 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1982). The claims are situated in the NE 1/4 sec. 31, T. 32 N., R. 37 E., Willamette Meridian, Ferry County, Washington, within the Colville Indian Reservation. In its June 1983 decision, BLM declared appellant's mining claims null and void ab initio because the land was set aside as an Indian reservation by Executive order, dated July 2, 1872, and was, thus, not available for mineral entry at the time of location of appellant's claims.

In her statement of reasons for appeal, appellant contends that she is a member of the Colville Confederated Tribes, with "full rights," and that the "two claims have been in my family for approximately 60 years."

[1] It is well established that land within an Indian reservation is segregated from mineral entry unless there is an express provision to the contrary and that a mining claim located at a time when the land is so segregated is properly declared null and void ab initio. Montana Copper King

Mining Co., 20 IBLA 30 (1975), and cases cited therein. In the present case, the land was set aside on July 2, 1872, as the Colville Indian Reservation by Executive order, which did not provide that the land was open to mineral entry.

In 1898 Congress declared that "mineral lands" in the Colville Indian Reservation were open to mineral entry. See Act of July 1, 1898 (30 Stat. 571, 593 (1898)). Subsequently, by the Act of March 22, 1906, ch. 1126, 34 Stat. 80 (1906), Congress provided for the allotment of land within the Colville Indian Reservation, and the sale and disposal of all surplus lands, including disposal of lands classified as mineral lands under the general mining laws, after allotment. The undisposed surplus lands were subsequently withdrawn from disposal, subject to valid existing rights, pursuant to section 3 of the Act of June 18, 1934, 25 U.S.C. § 463 (1982). See Restoration of Lands Formerly Indian to Tribal Ownership, 54 I.D. 559 (1934). The withdrawal had the effect of closing the land to mineral entry and a mining claim located after the date of withdrawal is properly declared null and void ab initio. Lyman B. Crunk, 68 I.D. 190 (1961). We also note that Congress restored undisposed lands of the Colville Indian Reservation to tribal ownership, subject to valid existing rights, by the Act of July 24, 1956, P.L. 772, 70 Stat. 626 (1956).

Appellant asserts that her claims date back approximately 60 years to July 1923. However, she has tendered no evidence which establishes the actual existence of, continuity of, title to, or privity with the original owners of claims located prior to withdrawal such that the current claims could be considered amended locations of claims which predate the 1934 withdrawal and the Act of July 24, 1956, supra. See R. Gail Tibbetts, 43 IBLA 210, 86 I.D. 538 (1979). Accordingly, appellant has tendered no evidence which could be used as a basis for a determination that appellant's rights date back 60 years. Without such evidence we conclude that BLM properly declared the claims null and void ab initio. Appellant is not entitled to locate mining claims within land set aside as the Colville Indian Reservation, and withdrawn from entry under the general mining laws, 30 U.S.C. Chapter 2 (1982). See United States v. Consolidated Mines & Smelting Co., 455 F.2d 432 (9th cir. 1971).

We express no opinion as to whether appellant might have any rights to engage in mining operations as a member of the confederated tribes. See 70 Stat. 627 (1956).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

R. W. Mullen
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Edward W. Stuebing
Administrative Judge.

